

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

FILED
RICHARD W. NAGEL
CLERK OF COURT
2016 FEB 24 PM 2:29
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

TRUSTEES OF THE COLUMBUS SHEET
METAL WORKERS APPRENTICESHIP
3031 LAMB AVENUE
COLUMBUS, OHIO 43219

CASE NO.

AND

2:16 CV 0173

TRUSTEES OF SHEET METAL WORKERS
LOCAL 98 PENSION FUND
3150 US ROUTE 60
ONA, WEST VIRGINIA 25545-9507

AND

JUDGE Judge Marbley

TRUSTEES OF SHEET METAL WORKERS
LOCAL 98 WELFARE FUND
3150 US ROUTE 60
ONA, WEST VIRGINIA 25545-9507

AND

MAGISTRATE JUDGE Tolson

TRUSTEES OF SHEET METAL WORKERS
LOCAL NO. 24 RETIREMENT SAVINGS PLAN
3150 US ROUTE 60
ONA, WEST VIRGINIA 25545-9507

PLAINTIFFS,

V.

R&C CONSTRUCTION SERVICES CO. LLC
C/O CHERYL L. MOORE
2220 STATE ROUTE 3
CATLETTSBURG, KY 41129

COMPLAINT

AND

PHILADELPHIA INDEMNITY INSURANCE
COMPANY
C/O TMNA SERVICES LLC
3 BALA PLAZA EAST, SUITE 400
BALA CYNWYD, PENNSYLVANIA 19004-3400

(FOR BREACH OF COLLECTIVE
BARGAINING AGREEMENT AND
TO RECOVER ON A SURETY BOND
THE CONTRIBUTIONS, INTEREST
AND DAMAGES DUE TO
PLAINTIFFS)

PARTIES

1. Plaintiffs are the Trustees of the Columbus Sheet Metal Workers Apprenticeship, Trustees of the Sheet Metal Workers Local 98 Pension Fund, Trustees of the Sheet Metal Workers Local 98 Welfare Fund and Trustees of the Sheet Metal Workers Local No. 24 Retirement Savings Plan (hereinafter SMW Funds”), employee benefit plans as that term is defined in the Employee Retirement Income Security Act of 1974, (hereinafter “ERISA”), 29 U.S.C. § 1002(3) and multiemployer plans as that term is defined in ERISA, 29 U.S.C. § 1002(37).

2. Defendant R&C Construction Services Co. LLC (hereinafter “R&C Construction”) is a for profit corporation registered in the State of Kentucky. Defendant transacts business as a contractor or subcontractor in the sheet metal industry and at all times herein was an “employer in an industry affecting commerce” as defined in the Labor-Management Relations Act, 1947, 29 U.S.C. Sections 142(1), (3) and 152(2); ERISA, 29 U.S.C. Sections 1002(5), (9), (11), (12), (14); the Multi-Employer Pension Plan Amendments of 1980, 29 U.S.C. § 1001(a).

3. Defendant Philadelphia Indemnity Insurance Company is a corporation duly organized and existing under the laws of Pennsylvania and is duly authorized to act as surety on performance bonds in Ohio.

JURISDICTION

4. This Court has jurisdiction under Sections 502 and 515 of ERISA, 29 U.S.C. §§ 1132 and 1145, and under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a).

5. This is an action for breach of a Collective Bargaining Agreement and a successor Collective Bargaining Agreement between an employer and a labor organization representing employees in an industry affecting commerce and an action to collect contributions, interest and

liquidated damages due to employee benefit plans under the terms of the Collective Bargaining Agreement and the successor Collective Bargaining Agreement.

FIRST CLAIM

6. Defendant R&C Construction entered into a Collective Bargaining Agreement with Sheet Metal Workers Local Union No. 24 (n/k/a International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 24 (Columbus Area), a labor organization as defined in the Labor-Management Relations Act, 1947, 29 U.S.C. § 152(5), (hereinafter “the Union”), effective June 1, 2012 through May 31, 2015. The Collective Bargaining Agreement obligated Defendant R&C Construction to report and pay contributions to the Plaintiffs pursuant to the terms of the collective bargaining agreement. The collective bargaining agreement states that reports and contributions are due and payable on the 20th day of the month following the month in which the hours are worked.

7. The Collective Bargaining Agreement provides:

“If an Employer fails to pay any contributions due, the Employer shall be liable for:

- 1) the unpaid contributions;
- 2) interest on unpaid contributions;
- 3) an amount equal to the greater of:
 - a) interest on the unpaid contributions,
 - b) liquidated damages in the amount of 20% of the unpaid contributions;
- 4) reasonable attorney’s fees and costs of any legal action brought against the Employer to collect contributions or other amounts due hereunder or to enforce the payment of such contributions or other amounts to be paid hereunder;
- 5) punitive damages in the event of persistent or willful failure or refusal to timely pay contributions required hereunder.

The Trustees or Union are authorized to seek against every delinquent Employer all legal or equitable relief, which may be appropriate.

Interest on unpaid contributions shall be at the rate of Twenty Percent (20%) per annum or the rate prescribed under Section 6621 of the Internal Revenue Code of 1954, whichever is greater, and all interest shall be compounded daily.”

8. Defendant R&C Construction entered into a successor Collective Bargaining Agreement with the Union effective June 1, 2015 through May 31, 2018. The Collective Bargaining Agreement obligated Defendant R&C Construction to report and pay contributions to the Plaintiffs pursuant to the terms of the collective bargaining agreement. The collective bargaining agreement states that reports and contributions are due and payable on the 20th day of the month following the month in which the hours are worked.

9. The successor Collective Bargaining Agreement provides:

“If an Employer fails to pay any contributions due, the Employer shall be liable for:

- 1) the unpaid contributions;
- 2) interest on unpaid contributions;
- 3) liquidated damages up to 20% of the unpaid contributions.
- 4) reasonable attorney’s fees and costs of any legal action brought against the Employer to collect contributions or other amounts due hereunder or to enforce the payment of such contributions or other amounts to be paid hereunder;
- 5) punitive damages in the event of persistent or willful failure or refusal to timely pay contributions required hereunder.

The Trustees or Union are authorized to seek against every delinquent Employer all legal or equitable relief, which may be appropriate.

Interest on unpaid contributions shall be at the rate of Twenty Percent (20%) per annum or the rate prescribed under Section 6621 of the Internal Revenue Code of 1954, whichever is greater, and all interest shall be compounded daily.”

10. The contribution report and payment of contributions were received by the Plaintiffs on July 13, 2015 for hours worked during May 2015.

11. Defendant R&C Construction in breach and violation of the successor Collective Bargaining Agreement, and in violation of Section 515 of ERISA, 29 U.S.C. § 1145, has failed and refused to file contribution reports and pay contributions for the months of June 2015, July 2015, August 2015 and September 2015 which contributions were due July 20, August 20, September 20 and October 20, 2015, respectively.

12. Plaintiffs have performed all conditions on their part to be performed. Unless this Court orders Defendant R&C Construction to file its contributions reports for the months of June 2015, July 2015, August 2015 and September 2015 and pay its delinquent contributions for the months of June 2015, July 2015, August 2015 and September 2015 Defendant R&C Construction will continue to refuse to file said reports and pay said contributions, resulting in irreparable harm to the Plaintiffs. Defendant R&C Construction has persistently and willfully failed and refused to timely file reports and pay contributions.

SECOND CLAIM

13. Plaintiffs re-allege and incorporate all of the allegations of paragraphs 1 through 12, above.

14. Defendant R&C Construction's contribution payment history is as follows:

<u>Work Month Ending</u>	<u>Contribution Due Date</u>	<u>Date Contributions Received</u>
11-30-2012	12-20-2012	02-15-2013
12-31-2012	01-20-2013	03-13-2013
01-31-2013	02-20-2013	03-13-2013
02-28-2013	03-20-2013	04-24-2013
03-31-2013	04-20-2013	05-24-2013
04-30-2013	05-20-2013	05-24-2013
05-31-2013	06-20-2013	07-15-2013
06-30-2013	07-20-2013	08-12-2013
07-31-2013	08-20-2013	09-11-2013
08-31-2013	09-20-2013	10-29-2013
09-30-2013	10-20-2013	10-10-2013
10-31-2013	11-20-2013	01-10-2014
11-30-2013	12-20-2013	01-10-2014
12-31-2013	01-20-2014	02-05-2014
01-31-2014	02-20-2014	03-04-2014
02-28-2014	03-20-2014	03-28-2014
03-31-2014	04-20-2014	06-06-2014
04-30-2014	05-20-2014	06-06-2014
05-31-2014	06-20-2014	07-07-2014
06-30-2014	07-20-2014	07-25-2014
07-31-2014	08-20-2014	10-03-2014
08-31-2014	09-20-2014	10-10-2014
09-30-2014	10-20-2014	11-12-2014
10-31-2014	11-20-2014	01-08-2015

11-30-2014	12-20-2014	01-30-2015
12-31-2014	01-20-2015	01-30-2015
01-31-2015	02-20-2015	02-27-2015
02-28-2015	03-20-2015	05-01-2015
03-31-2015	04-20-2015	05-01-2015
04-30-2015	05-20-2015	06-30-2015
05-31-2015	06-20-2015	07-13-2015
06-30-2015	07-20-2015	Contributions Not Paid
07-31-2015	08-20-2015	Contributions Not Paid
08-31-2015	09-20-2015	Contributions Not Paid
09-30-2015	10-20-2015	Contributions Not Paid

15. Defendant R&C Construction's previous thirty-one (31) contribution payments have been delinquent. Under the terms of the Collective Bargaining Agreement and successor Collective Bargaining Agreement Defendant R&C Construction is obligated to pay interest and liquidated damages on all late or unpaid fringe benefit contributions

16. Defendant R&C Construction's contribution payments for June, July, August and September, 2015 work were due July, August, September and October, 2015, respectively. These payments are delinquent and interest and liquidated damages will be assessed once the period of delinquency can be determined. Defendant R&C Construction is obligated to pay interest and liquidated damages on all late or unpaid fringe benefit contributions.

17. Plaintiffs have performed all conditions on their part to be performed. Unless this Court orders Defendant R&C Construction to file its contributions reports for the months of June 2015, July 2015, August 2015 and September 2015 and pay its delinquent contributions for the months of June 2015, July 2015, August 2015 and September 2015 Plaintiffs will be unable to calculate the total amount of interest and liquidated damages that Defendant R&C Constructions owes on its delinquent contributions. Defendant R&C Construction has persistently and willfully failed and refused to timely file reports and pay contributions.

THIRD CLAIM

18. Plaintiffs re-allege and incorporate all of the allegations of paragraphs 1 through 17, above.

19. At all times material hereto Defendant R&C Construction has been Principal and Defendant Philadelphia Indemnity Insurance Company has been Surety on a bond, Bond No. PB11499800212, wherein the Surety guarantees payment of the aforesaid contributions to Plaintiffs, up to the amount of Ten Thousand Dollars and No Cents (\$10,000.00).

20. As the result of the Principal's failure to pay contributions as aforesaid, the Surety, Defendant Philadelphia Indemnity Insurance Company, is obligated on its bond to pay to Plaintiffs up to the sum of \$10,000.00.

WHEREFORE, Plaintiffs pray for judgment against Defendant R&C Construction for all contributions found to be due and owing at the time of judgment, pre-judgment interest and post-judgment interest at the rate of 20% per annum, and liquidated damages in the amount of 20% of the unpaid contributions (for June, July, August and September, 2015); liquidated damages in the amount of 20% on all delinquent contributions submitted previously for the work months of November 2012 through May 2015, inclusive; interest at the rate of 20% per annum, compounded daily, on all delinquent contributions submitted previously for the work months of November 2012 through May 2015, inclusive; punitive damages; a mandatory injunction ordering Defendant R&C Construction to timely report and pay all future contributions due; and reasonable attorney's fees and costs. Plaintiffs pray for judgment against Defendant Philadelphia Indemnity Insurance Company for all contributions found to be owing, up to Ten Thousand Dollars and No Cents (\$10,000.00).pre-judgment and post-judgment interest and costs.



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